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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Implementation of Cable Act Reform Provisions )  
of the Telecommunications Act of 1996 )

CS Docket No. 96-85

COMMENTS OF BELL ATLANTIC<sup>1</sup> DOCKET FILE COPY ORIGINAL

Introduction and Summary

Bell Atlantic respectfully submits comments in response to the Commission's Notice in the above-captioned proceeding.

**I. Effective Competition**

Congress did not include a "pass or penetration rate"<sup>2</sup> in the additional test for effective competition enacted with the Telecommunications Act of 1996. §301(b)(3). Instead, the 1996 Act simply provides that a local exchange carrier or its affiliate, or any multichannel video programming provider using the facilities of the LEC or its affiliate, offer comparable video programming services directly to subscribers in the franchise area of an unaffiliated cable operator. Id. By contrast, the tests in the pre-1996 definition of effective competition do contain various percentage requirements. In omitting any such requirement from the additional test

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<sup>1</sup> These comments are filed on behalf of the Bell Atlantic Telephone Companies (Bell Atlantic - Delaware, Inc., Bell Atlantic - Maryland, Inc., Bell Atlantic - New Jersey, Inc., Bell Atlantic - Pennsylvania, Inc., Bell Atlantic - Virginia, Inc., Bell Atlantic - Washington, D.C., Inc., and Bell Atlantic - West Virginia, Inc.) and Bell Atlantic Video Services Company ("Bell Atlantic").

<sup>2</sup> Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking, CS Docket No. 96-85, FCC 96-154, (rel. Apr. 9, 1996) at ¶72 (hereafter, "Notice").

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enacted in the 1996 Act, Congress clearly signaled that such qualifiers were not necessary. The Commission should not engraft onto the new Act words which Congress did not use.

## **II. Definition of “Affiliate”**

The Commission seeks comment on the appropriate definition of “affiliate” in three separate contexts -- the additional test for effective competition; open video systems; and the 1996 Act’s prohibition on buy-outs of cable companies by telephone companies and vice versa. Notice, ¶¶ 74-77, 95-96.

As the Commission notes, Title VI contains its own definition of “affiliate” which was not amended when Congress passed the 1996 Act, even though Congress added a definition of “affiliate” to the general definition section in Title I. Both definitions focus on “common ownership or control” between the subject entities. 47 U.S.C. §§153(33), 522(2). The Commission’s approach should be the same. For example, where a single person owns a majority interest in a particular entity, the other owner(s) should not be deemed to have “control” over the entity, even if their interests exceed a specific threshold.

Moreover, the Commission should be careful not to resurrect the overly intrusive and burdensome regulatory structure of video dial tone. Finding common ownership or control at unduly low levels of equity ownership, or on the basis of non-equity interests, could impede the ability of telephone companies and cable operators to construct pro-competitive business arrangements or could hinder the ability of OVS operators to address a market that is used to a variety of business arrangements for the carriage of programming.

### **III. MDUs**

Bell Atlantic has explained in other contexts why the Commission should prohibit exclusive contracts between owners or managers of multiple dwelling units and multichannel video programming providers, and will not repeat those arguments here.<sup>3</sup> For the reasons stated in those documents, the Commission, in crafting rules to implement the 1996 Act's bulk discount exception, should be careful not to create requirements that will impose a de facto exclusive relationship between incumbent cable operators and building owners.

### **IV. Other Matters**

The Commission seeks comment on how it can advance Congress' goal of "encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" within the context of cable services regulation, Notice, ¶ 109, and asks whether there are other issues that should be addressed. Notice, ¶ 112. The Commission can encourage deployment of advanced telecommunications ensuring that competing providers of telecommunications services face equivalent regulatory burdens. For example, cable operators that use an integrated network to provide both video programming and telephone service should be subject to the same regulatory requirements, such as Part 64 cost allocation rules, that apply to telephone companies using an integrated network to provide both telephone service and video programming. Imposing burdens on one competitor not shared by others will discourage competitive investment in the market. Moreover, to the extent that

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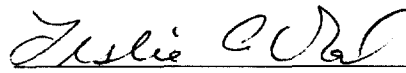
<sup>3</sup> Telecommunications Service Inside Wiring, Customer Premises Equipment, CS Docket No. 95-184, FCC 95-504 (rel. Jan. 26, 1996), Reply Comments of Bell Atlantic, filed April 17, 1996; Implementation of Section 207 of the Telecommunications Act of 1996, CS Docket No. 96-83, FCC 96-151 (rel. Apr. 4, 1996), Reply Comments of Bell Atlantic, filed May 21, 1996.

customers of the telephone company's regulated services are deemed to need the "protection" afforded by such rules, customers of the cable operator's rate regulated services are no less deserving of protection.

#### Conclusion

For the foregoing reasons, the Commission should not add any pass rate or penetration percentage requirement to the additional test for effective competition enacted with the 1996 Act. The Commission should adopt a definition of affiliate that permits constructive business relationships between cable operators and telephone companies, and between open video system operators and programmers. Finally, the Commission should streamline or eliminate regulatory burdens in order to encourage deployment of advanced telecommunications capability, and should ensure that competitors are subject to equivalent regulatory burdens.

Respectfully submitted,



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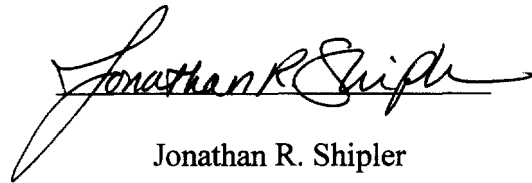
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June 4, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 1996 a copy of the foregoing  
“Comments of Bell Atlantic” was sent by first class mail, postage prepaid, to the parties on  
the attached list.



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